

DSL Internet Corporation
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Miami, FL 33155

Federal Communications Commission

Washington, DC 20554

In the Matter of:) Case No.: CC DOCKET NO 97-213
)
COMMUNICATIONS ASSISTANCE FOR LAW) Petition for Extension of Time to
) Comply with the Assistance Capability
ENFORCEMENT ACT) Requirement of Section 103 of CALEA
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)
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DSL Internet Corporation hereby petitions the Federal Communications Commission ("Commission"), pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), ¹ 47 USC 1006 (c), for an extension of time to comply with the assistance capability requirements. DSL Internet Corporation specifically requests an extension of the compliance date to December 31, 2002 because CALEA-compliant technology is not available for integration into DSL Internet Corporation's network.

BACKGROUND

CALEA permits a carrier to seek, and the Commission to grant, an extension of the compliance date "if the Commission determines that compliance with the assistance capability requirements... is not reasonably achievable through application of technology available within the compliance period." 47 USC 1006 (c). As the initial CALEA compliance date approached

¹ Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 USC 25222 and 47 USC 229, 1001-1010).

in 1998, dozens of carriers and manufacturers petitioned the Commission for an extension.

After taking extensive public comment, in its *Memorandum Opinion and Order*, dated September 11, 1998, the Commission granted all telecommunications carriers and manufacturers a blanket extension of the CALEA compliance deadline from October 25, 1998 to June 30, 2000. In the *Matter of Petition for the Extension of the Compliance Date under Section 107*, FCC 98-223 (*"Extension Order"*). In doing so, the Commission found "that compliance with the assistance capability requirements of Section 103 of CALEA is not reasonably achievable within the compliance period." *Extension Order*, par. 1 23 (citing 47 USC 1001 note (b), 1006 (c) (2)).

The fact that the telecommunications industry had promulgated a standard for compliance, or that numerous parties had petitioned the Commission to declare the standard deficient, did not weigh in the Commission's decision. Rather, the Commission explained that its "conclusion rests on the determination that, although an industry standard has been developed, there is no technology available that will enable carriers to implement that standard," *Extension Order*, par. 25, and, that there were no fully developed alternative technologies or solutions either. *Id.*

However, given that the core elements of the industry standard went unchallenged, the Commission believed that in the setting a "firm" deadline of June 30, 2000, "manufacturers should be able to produce equipment that will be generally available for carriers to meet the Section 103 capability requirements by December 31, 1999." Par.48. The Commission also anticipated

that only an additional six months would be necessary to purchase, test and install such equipment and facilities throughout their network. ² *Id.*

In statements accompanying the *Extension Order*, Commissioners Ness and Powell described the extension as "aggressive" but believed it "achievable." Commissioner Furchtgott-Roth added in a separate statement that he did "not believe, however, that {the Commission} could predict with such great precision when compliance will be possible." Thus, while the Commission did not think additional extensions would be required, it refused to foreclose the possibility, noting that "the plain language of Section 107 © states that carriers may petition the Commission for one or more extensions of the deadline." *Id.*, par. 50.

In a separate, but parallel proceeding to determine the technical requirements of CALEA, the Commission considered whether a further blanket extension of the compliance date should be granted as it reviewed the industry standard for compliance. In the Matter of the Communications Assistance for Law Enforcement Act, Third Report and Order, CC Docket No. 97-213, (August 31, 1999) par. 34-36. Because the Commission left the core *elements* of the industry standard intact, it declined to issue a further blanket extension of what it considered a "firm" deadline. *Id.*, par 36. The Commission again did not (and could not) foreclose individual or subsequent industry-wide petitions under section 107 (c) of CALEA; it simply did not anticipate that such petitions would be forthcoming based on the record before it at the time.

CARRIER COMPLAINT EFFORTS

DSL Internet Corporation uses equipment within its network manufactured by CopperCom. DSL Internet has worked in good faith with CopperCom to produce CALEA-compliant technology to meet the deadline established in the *Extension Order*. Unfortunately, according to CopperCom, technology still is not available to meet the CALEA assistance capability requirements and will not be full available until the end of July 2002.

Once available, DSL Internet will need to test and integrate the technology. DSL Internet anticipates a first office application by September 2002. Accordingly, an extension until December 31, 2002 will be necessary to achieve compliance.

DSL Internet's manufacturer is in negotiation with the FBI to provide the required software upgrade through a right-to-use license agreement. However, even though these discussions are proceeding, the Commission has stated that the fact of ongoing negotiations that will affect a carrier's compliance schedule is not a sufficient reason to deny an extension.

CONCLUSION

As the Commission recognized in its *Extension Order*, the sole question before it on a Section 107 (c) petition is whether CALEA-compliant technology is available to the carrier within the compliance period. *Extension Order*, par. 25.

DSL Internet has conclusively shown that CALEA-compliant technology is not available to it at this time, but that its manufacturer is working diligently to provide compliant solutions. Accordingly, an extension of time until December 31, 2002 should be granted.

Dated this 10th day of June, 2002

By:

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